

1 abandonment by Raystay of its business concept for the low
2 power stations and therefore is reflective of Raystay's intent
3 not to pursue construction and operation of any of these
4 stations.

5 MR. SCHAUBLE: Your Honor, I respectfully submit
6 that's a hypothetical and speculative argument. If a group
7 owner sells a station, whether it's a permit or a license, is
8 that necessarily evidence of what the permit to your licensee
9 intends to do with other permits or licenses it may hold? I
10 respectfully submit there's no connection here.

11 JUDGE CHACHKIN: Does the Bureau have any comments
12 on this?

13 MR. SCHONMAN: Yes, the Bureau views this document
14 as being relevant, that it is indicative of a pattern of
15 conduct that Raystay displayed.

16 MR. SCHAUBLE: And Your Honor, I would ask what
17 pattern of conduct --

18 JUDGE CHACHKIN: Well --

19 MR. SCHAUBLE: -- I mean the record reflects that
20 Lancaster and Lebanon permits were never sold.

21 MR. SCHONMAN: Your Honor, it's difficult for me to
22 explain any further than Mr. Emmons has already done. As Mr.
23 Emmons explained, there was, I think the testimony will show
24 that there was a plan to sell the construction permits as a
25 unit. The sale of this particular permit indicates that that

1 plan was abandoned, and the evidence, I think, will further
2 show that there were attempts to sell the remaining permits.

3 JUDGE CHACHKIN: Well, what does the sale of the --
4 this permit have to do with the issues?

5 MR. EMMONS: Well, Your Honor, if I could address
6 that.

7 JUDGE CHACHKIN: Yes.

8 MR. EMMONS: I think the evidence is going to show
9 when we get into the testimony with the witnesses, that the --
10 all of the five construction permits including this Red Lion
11 permit were conceived of as a group. Raystay had a conflict
12 of how it was going to link all these systems together, and
13 tie them into Channel 40, its existing station. And that was
14 the plan that originally Raystay had for building and
15 operating these stations.

16 It became apparent very early that that wasn't going
17 to work, and the reasons why it wasn't going to work was
18 explained by the witnesses. And at that point, we believed
19 the evidence shows that Raystay simply abandoned an attempt to
20 pursue the project at all.

21 And since the York -- if I could just read one
22 excerpt from the deposition, Your Honor, which I think
23 illustrates this very clearly. In the testimony of George
24 Gardner, in his deposition, he was asked the following
25 questions and gave the following answers.

1 Question, "When Raystay filed those applications for
2 the construction permits in March of 1989, did you have a
3 business plan in mind?" The answer is "Yes."

4 Question, "What was it?" Answer, "The intent for
5 the applications was to see who could put a regional group of
6 stations together, that we could put common programming on to
7 reach the Harrisburg, York, Lancaster market."

8 So it is conceived as an integral group and when
9 that plan was abandoned, and the sale of one the central
10 components of that group was effectuated, that is evidence, it
11 doesn't necessarily compel the inference, but it certainly
12 permits the inference, that the Raystay never had an intent at
13 that point to go forward, and this was just at about the same
14 time as the first of the extension applications was filed, and
15 it was well before the second set of extension applications
16 was filed.

17 MR. SCHAUBLE: Your Honor, I hardly know where to
18 begin here.

19 JUDGE CHACKIN: Well, perhaps that's not necessary.
20 I'll receive TBF Exhibit 241. I'm satisfied that it is
21 relevant or may be relevant, depending on testimony, based on
22 what was read from the deposition.

23 (Whereupon, the document referred to
24 as TBF Exhibit No. 241 was received
25 into evidence.)

1 MR. SCHAUBLE: And Your Honor, if the record will
2 reflect, I believe that if other portions of the deposition
3 that the record as a whole would not support the
4 characterizations --

5 JUDGE CHACHKIN: Well, then --

6 MR. SCHAUBLE: -- given the account --

7 JUDGE CHACHKIN: -- I'm sure it will be brought out
8 in the testimony, if that's the case, you can move to strike
9 it. We do have an admission from a principal as to what his
10 intent was, when he acquired all these construction permits.
11 Objection to 242?

12 MR. SCHAUBLE: No, Your Honor. My next objection --

13 JUDGE CHACHKIN: Well, let me indicate -- well, what
14 is your next objection?

15 MR. SCHAUBLE: My next objection is to 248, Your
16 Honor.

17 JUDGE CHACHKIN: All right. TBF Exhibit 242 through
18 247 are received.

19 (Whereupon, the documents referred to
20 as TBF Exhibit No. 242-247 were
21 received into evidence.)

22 JUDGE CHACHKIN: What is your objection to 248?

23 MR. SCHAUBLE: Objection to 248 on the basis of
24 relevance, Your Honor. Make the -- again I think we're
25 working at least in the very margins of the issue here. The

1 issue is whether the statements made in the extension
2 applications were made, and misrepresentations a lack of
3 candor, and we seem to be getting off in sort of different
4 issue as to intent concerning the negotiations and possible
5 sales which never happened.

6 And there is an outfit called LPTV, and I believe
7 the record -- the record does not reflect, other than this one
8 letter, that Raystay ever had any negotiations or contact with
9 LPTV. That nothing ever happened between these two companies.

10 JUDGE CHACHKIN: Well, I'm sure there's testimony on
11 this, which will be brought out, is that right, Mr. Emmons?

12 MR. EMMONS: Yes, Your Honor, if I may respond just
13 a little bit further to Mr. Schauble's comments.

14 The date of this letter is about one month before
15 the filing of the second set of extension applications by
16 Raystay, and what this letter reflects, we would contend, is
17 that by this time, Raystay was so anxious to sell that it was
18 writing to post office boxes, saying, "We are interested in
19 the possibility of selling these CPs, please call me if you
20 have any interest in any of them -- have any interest in
21 them."

22 So that goes directly to the state of mind of the
23 permittee at about the time, or just before the time that it
24 filed a second set of applications with the Commission asking
25 for extension.

1 MR. SCHAUBLE: Your Honor --

2 JUDGE CHACHKIN: You have something to say, Mr.
3 Schauble?

4 MR. SCHAUBLE: Your Honor, I just wanted to state
5 that there's still no connection between this document, and
6 any of the statements that were made in the extension
7 application.

8 JUDGE CHACHKIN: Well, I assume your argument is
9 that there should have been some -- well, the argument --
10 well, I'm not going to get into it, but I'm satisfied that TBF
11 Exhibit 248 is relevant, and I'm going to receive it.

12 (Whereupon, the document referred to
13 as TBF Exhibit No. 248 was received
14 into evidence.)

15 MR. EMMONS: Your Honor, I'm not sure --

16 MR. EMMONS: Excuse me. I can't remember if you
17 received the preceding four or five exhibits, as to which Mr.
18 Schauble had no objection.

19 JUDGE CHACHKIN: I received them.

20 MR. EMMONS: I'm sorry, okay.

21 JUDGE CHACHKIN: 249, any objection?

22 MR. SCHAUBLE: No, Your Honor.

23 JUDGE CHACHKIN: TBF Exhibit 249 is received.

24 (Whereupon, the document referred to
25 as TBF Exhibit No. 249 was received

1 into evidence.)

2 JUDGE CHACHKIN: Any objection to 250?

3 MR. SCHAUBLE: No, Your Honor.

4 JUDGE CHACHKIN: TBF Exhibit 250 is received.

5 (Whereupon, the document referred to
6 as TBF Exhibit No. 250 was received
7 into evidence.)

8 JUDGE CHACHKIN: Now we're getting close to the end
9 it looks like.

10 MR. EMMONS: Yes, Your Honor. I'll identify the
11 next ten, Your Honor, then.

12 JUDGE CHACHKIN: Go ahead.

13 MR. EMMONS: TBF Exhibit 251 is an exhibit totalling
14 16 pages, which collectively are the four applications for
15 extension of construction filed by Raystay on the July 9,
16 1992.

17 (Whereupon, the document referred to
18 as TBF Exhibit No. 251 was marked for
19 identification.)

20 MR. EMMONS: TBF Exhibit 252 is -- consists of two
21 pages. The first page is a copy of a letter from the
22 Commission Chief of the Low Power Television Branch to
23 Raystay's counsel, reporting the grant of the extension
24 application.

25 The second page of the exhibit is the same except

1 that in the upper left-hand corner of each of the two pages,
2 there is, in the case of the first page, the handwritten word
3 "Lee," L-E-E. And on the second page the handwritten word
4 "George." And so both pages are included in the Exhibit.

5 (Whereupon, the document referred to
6 as TBF Exhibit No. 252 was marked for
7 identification.)

8 MR. EMMONS: Page -- excuse me TBF Exhibit 253 is a
9 letter dated September 24, 1992, to David Gardner from Morton
10 Berfield.

11 (Whereupon, the document referred to
12 as TBF Exhibit No. 253 was marked for
13 identification.)

14 MR. EMMONS: TBF Exhibit 254 is a letter dated
15 February 4, 1993, to David Gardner from John Schauble.

16 (Whereupon, the document referred to
17 as TBF Exhibit No. 254 was marked for
18 identification.)

19 MR. EMMONS: TBF Exhibit 255 is a letter dated March
20 23, 1993 to the Commission from John Schauble.

21 (Whereupon, the document referred to
22 as TBF Exhibit No. 255 was marked for
23 identification.)

24 MR. EMMONS: TBF Exhibit 256 is a three page
25 document, which is a declaration of Lee H. Sandifer, dated

1 June 3, 1993, with two pages of attachments.

2 (Whereupon, the document referred to
3 as TBF Exhibit No. 256 was marked for
4 identification.)

5 MR. EMMONS: TBF Exhibit 257 is a copy of the
6 Commission's decision in the RKO, Fort Lauderdale, Florida
7 case, February 2, 1990.

8 (Whereupon, the document referred to
9 as TBF Exhibit No. 257 was marked for
10 identification.)

11 MR. EMMONS: TBF Exhibit 258 is a -- I'm sorry, I
12 should go back, I think, to 257 and just mention that that
13 document consists of five pages. 258 consists of four pages,
14 which are the cover letter dated March 14, 1990, enclosing a
15 declaration of George Gardner, all of which were filed with
16 the FCC on March 14, 1990.

17 (Whereupon, the document referred to
18 as TBF Exhibit No. 258 was marked for
19 identification.)

20 MR. EMMONS: TBF Exhibit 259 is a document totalling
21 three pages, likewise a cover letter dated May 7th, 1990,
22 enclosing a declaration of George Gardner, filed with the
23 Commission on May 7, 1990.

24 (Whereupon, the document referred to
25 as TBF Exhibit No. 259 was marked for

1 identification.)

2 MR. EMMONS: And TBF Exhibit 260 is a letter from
3 the Commission for the Chief of the Mass Media Bureau, to
4 George F. Gardner, dated July 23, 1990.

5 (Whereupon, the document referred to
6 as TBF Exhibit No. 260 was marked for
7 identification.)

8 JUDGE CHACHKIN: The documents described are marked
9 for identification as TBF Exhibits 251 through 260. You're
10 offering these Exhibits at this time?

11 MR. EMMONS: I'll offer all of those into evidence,
12 Your Honor.

13 JUDGE CHACHKIN: Do you object to -- well, let me go
14 over it.

15 MR. SCHAUBLE: Your Honor, I have no objection to
16 251.

17 JUDGE CHACHKIN: All right.

18 MR. SCHAUBLE: To 253.

19 JUDGE CHACHKIN: All right. TBF 251, 252 and 253
20 are received.

21 (Whereupon, the documents referred to
22 as TBF Exhibits No. 251-253 were
23 received into evidence.)

24 JUDGE CHACHKIN: Do you object to 254?

25 MR. SCHAUBLE: Yes, Your Honor, I object on the

1 basis of relevance. In discovery, Your Honor, I put a time
2 frame on this issue of July 1992. This is a letter that was
3 written months after the second extension applications were
4 filed.

5 And as Your Honor indicated in Discovery that
6 matters that happened after the filing of such an extension
7 application have no relevance because they had no bearing on
8 Raystay's intent or motive at the time the extension
9 applications were filed. I therefore see no relevance to this
10 document.

11 MR. EMMONS: Your Honor, the -- this is evidence of
12 a reason that a trier of fact could find, I won't say
13 necessarily would find, but could find that the reason Raystay
14 ultimately surrendered its construction permits in March of
15 1993, was that it had been informed by the Commission, and
16 what's been received as Exhibit 252, that the Commission would
17 not grant any further extension applications, and would not
18 permit an assignment of construction permits.

19 And that's relevant, Your Honor, because I believe
20 that that would support an inference, and again I wouldn't
21 necessarily compel the inference, but would certainly support
22 an inference that the previous extension applications were
23 filed with an intent to sell.

24 So the discussion then TBF Exhibit 254 of what the
25 Commission had said in its earlier letter, is relevant to that

1 point, Your Honor.

2 MR. SCHAUBLE: Your Honor, first of all I believe
3 the deposition testimony contradicts the -- there is
4 deposition testimony on this point which contradicts the
5 inference Mr. Emmons wishes to provide. And second he -- and
6 second of all, there -- I don't believe that such a letter
7 would support such an inference, if you read the letter, it
8 lists forth a series of options, depending upon what had
9 happened. If you read the first sentence of the second
10 paragraph in this letter, it states "If construction will be
11 completed, and a license application filed by March 23, no
12 action need be taken at this time."

13 And it talks about various options, depending on
14 where the stations are. So I don't think this document has
15 any relevance, and I don't think something that was written in
16 February of 1993, can go back and draw an inference from that,
17 as to what Raystay's intent was in July of 1992, or December
18 1991.

19 JUDGE CHACHKIN: What's the Bureau's position on
20 this?

21 MR. SCHONMAN: Your Honor, this document essentially
22 completes a picture which I think will be developed at the
23 hearing. That Raystay did not intend to construct, and in
24 fact the attorney wrote to Mr. Gardner, regarding disposition
25 of the permits and as we know, or will find out, the permits

1 were essentially turned in, ultimately turned in. And I think
2 this document, as I said, completes that picture.

3 JUDGE CHACHKIN: I'll overrule the objection. TBF
4 Exhibit 254 is received.

5 (Whereupon, the document referred to
6 as TBF Exhibit No. 254 was received
7 into evidence.)

8 JUDGE CHACHKIN: Any objection to 255?

9 MR. SCHAUBLE: Yes, Your Honor. Your Honor,
10 specifically stated at the pre-hearing conference, the fact
11 that the -- the fact that the permits -- the fact that he
12 later turned and decided not to build the station is
13 irrelevant, in transcript 108. So I don't --

14 JUDGE CHACHKIN: That's true. Standing alone, it's
15 irrelevant. It depends what the testimony is, concerning what
16 took place. Based on what I've heard, I'll overrule the
17 objection, and TBF Exhibit 255 is also received.

18 (Whereupon, the document referred to
19 as TBF Exhibit No. 255 was received
20 into evidence.)

21 MR. SCHAUBLE: Would I be correct, Your Honor that
22 --

23 JUDGE CHACHKIN: I don't know if this will be
24 establish, I'm saying this is what they're trying to
25 establish. We'll just have to wait and see when the testimony

1 is --

2 MR. SCHAUBLE: And again, Your Honor, as another
3 exhibit, would it be correct that Glendale would have the
4 right to make a motion to strike if --

5 JUDGE CHACHKIN: Absolutely. If it's not tied in,
6 you can certainly make a motion, yes. If it's not supported
7 by testimony. Unless the document itself is an admission.
8 But absent that, you can certainly move to strike if it's not
9 tied in.

10 MR. SCHAUBLE: Thank you, Your Honor.

11 JUDGE CHACHKIN: Objection to 256?

12 MR. SCHAUBLE: Objection to 256 on the basis of
13 relevance, Your Honor. This was a declaration that was
14 provided, that Glendale provided in opposing another issue
15 sought by TBF. TBF sought an issue to determine whether
16 Glendale would construct its proposed station, and in light of
17 the fact that the low power construction permits were not
18 filled.

19 And Your Honor, in paragraph 23 of order FCC 93M-469
20 denied this issue. And this declaration was provided as part
21 of the showing with respect to that issue, and I don't see the
22 relevance.

23 JUDGE CHACHKIN: Well, let's hear from Counsel. Mr.
24 Emmons, how does the -- this issue?

25 MR. EMMONS: Yes, we have no interest in the

1 previous issue that Mr. Schauble alluded to which Your Honor,
2 and that is in no way the purpose of this Exhibit, and will
3 not be used or discussed in any for that -- in that regard.

4 The relevance of this Exhibit to -- with you Your
5 Honor, is this. There will be testimony that you will hear,
6 that the reason, or at least one of the reasons why Raystay
7 originally had a concept to apply for and build these five
8 additional construction permits for low power was to create a
9 regional network, to make profitable T.V. 40 which had begun
10 operation earlier, and which was not -- was not profitable.

11 In other words, the concept was to in effect, get
12 T.V. 40 into the black rather than being in the red. And the
13 -- this Exhibit is offered for the purpose of its balance
14 sheet, and the testimony that Mr. Sander -- has supplied to
15 explain what the balance sheet said concerning the amount of
16 moneys that T.V. 40 was losing in each of the years reflected
17 above.

18 And in that regard, this will be probative of
19 Raystay's decision to sell T.V. 40 and to get out of the low
20 power business. And it will show why Raystay was looking to
21 get out of that business by 1991, which is -- ties into the
22 earlier evidence regarding the efforts to sell T.V. 40, as
23 well as to divide stations, which again in the larger picture
24 ties into the abandonment by Raystay of an intent to continue
25 in the business.

1 Now, it is true that Raystay has not sold T.V. 40
2 as it turned out, and there will be some interesting testimony
3 for Your Honor, as to why it wasn't sold. But this is
4 relevant to that decision which is again reflective of the
5 intent to get out of this business altogether.

6 JUDGE CHACHKIN: TBF Exhibit 256 is received.

7 (Whereupon, the document referred to
8 as TBF Exhibit No. 256 was received
9 into evidence.)

10 JUDGE CHACHKIN: Objection to 257?

11 MR. SCHAUBLE: Yes, Your Honor, here I think we have
12 a document that's in a completely different category here.
13 Here we have nothing factual relating to T.V. 40, or any of
14 the construction permits. But to prior order of the
15 Commission, which TBF has brought to Your Honor's attention
16 previously, concerning -- TBF several issues.

17 JUDGE CHACHKIN: All right. How is this relevant to
18 this issue?

19 MR. EMMONS: Well, it's again, Your Honor, we're not
20 seeking to re-litigate anything that's previously been ruled
21 on at all. That's not the purpose of this, or the relevance
22 of this.

23 The relevance of this, Your Honor, goes to the
24 second prong of the issue, if I can call it that. The
25 designated issue as is the case with any -- any designated

1 character issue, in this case, first, the first prong is to
2 determine whether there was misrepresentation or lack of
3 candor.

4 The second prong reads, "And if so, the effect
5 thereof on Glendale Broadcasting Company's qualifications to
6 be a licensee," this exhibit, Your Honor, goes to the second
7 prong in the following respect.

8 It is Commission law well established that an
9 applicant who, or licensee who commits misconduct while under
10 heightened scrutiny of the Commission for some reason, that
11 the weight given to the misconduct is of special significance,
12 that was established in the Star Stations of Indiana Case,
13 among others. I'll read just one portion of that that will
14 reflect what I'm talking about.

15 The Commission there disqualified a licensee, I
16 think of five stations, and in the course of that, said, "Much
17 of the serious misconduct which has occurred at WIFE, took
18 place while Star was on notice by virtue of the probationary
19 grant of renewals, that its operation would be under close
20 scrutiny by the Commission. The significance of the
21 misconduct established on this record must be viewed against
22 this background. Also, this circumstance must be given
23 substantial weight, when the Commission considers the
24 likelihood of future compliance by Star Stations."

25 And there are other cases to that effect, Your

1 Honor, that's found at 51, FCC, page 97. The significance of
2 TBF Exhibit 257 lies in the fact that this is the document by
3 which the Commission in paragraph 22 is found on page 3 of the
4 exhibit, placed George Gardner who is the applicant of this
5 proceeding under "heightened scrutiny," because of past
6 misconduct that was the subject of issues tried in another
7 proceeding.

8 And so if Your Honor will find -- if the Commission
9 were to find in this case that Raystay committed the
10 misconduct that is the subject of the designated issue here,
11 then it would be relevant, and directly relevant to consider
12 the fact that the applicant was under heightened scrutiny when
13 that misconduct occurred here.

14 So that's the relevance of this, Your Honor.

15 JUDGE CHACHKIN: Do you want to take official notice
16 of the fact that --

17 MR. EMMONS: Yes, that's --

18 JUDGE CHACHKIN: -- heightened scrutiny. Yes.

19 MR. SCHAUBLE: Your Honor, I think there are some
20 more facts that need to be taken into account here. And that
21 the hearing designation order in this. The instance, what Mr.
22 Emmons is arguing is that the decision in this case should
23 form some sort of basis for the qualification of George
24 Gardner in Glendale Broadcasting Company, but in the hearing
25 designation order in this case, the Commission specifically

1 reviewed the showing Mr. Gardner had made in the application
2 and in -- and it made previously with respect to low power
3 applications, and specifically found that he was qualified in
4 that regard.

5 So therefore --

6 JUDGE CHACHKIN: The fact of the matter is, these
7 are new facts that should come in these allegations I should
8 say, and new, which have now come into existence. And they
9 relate to the fact period in which he was under heightened
10 scrutiny.

11 The Commission when it made its determination, it
12 didn't have these facts before, or these allegations before
13 it.

14 MR. SCHAUBLE: And Your Honor, if the record, which
15 we do not believe it will reflect that George Gardner engaged
16 in -- engaged in misconduct, I believe Your Honor's decision
17 would be based upon the record developed in this proceeding,
18 not what happened in --

19 JUDGE CHACHKIN: I'm not, that's absolutely right,
20 but the fact that Mr. Gardner was under heightened scrutiny at
21 the time these events occurred, certainly have a bearing, as
22 we've pointed out on Star Stations on any penalty that would
23 be imposed.

24 MR. SCHAUBLE: Your Honor --

25 JUDGE CHACHKIN: We're not dealing, in other words,

1 with a licensee who wasn't in trouble with the Commission. If
2 someone is on probation and they conduct further misconduct,
3 it's a factor to be considered in determining what should be
4 the penalty if any.

5 MR. SCHAUBLE: Your Honor.

6 JUDGE CHACHKIN: In other words, I'm not going over
7 the facts again, and I'm taking official notice of the
8 document for purposes of the period of time when Mr. Gardner
9 was on -- under heightened scrutiny, without getting into the
10 misconduct which caused the Commission to put him under -- on
11 heightened scrutiny. I certainly think it's a relevant factor
12 to be considered. He was on probation at that time.

13 MR. SCHAUBLE: Your Honor, let me ask, will -- will
14 you be allowing the parties to ask Mr. Gardner questions about
15 --

16 JUDGE CHACHKIN: About what?

17 MR. SCHAUBLE: About this decision?

18 JUDGE CHACHKIN: Of course not.

19 MR. SCHAUBLE: Okay, that's --

20 JUDGE CHACHKIN: I'm not interested on the basis of
21 the Commission's decision, I'm only interested on the fact
22 that the Commission put him on notice of heightened scrutiny.

23 MR. EMMONS: The only question I might want to ask
24 the witness, Mr. Gardner about this is what I think is self
25 evident anyway, which is whether he was aware of it.

1 JUDGE CHACHKIN: All right.

2 MR. EMMONS: That would be permissible, sir.

3 MR. SCHAUBLE: Your Honor, I don't think that's a
4 fact --

5 JUDGE CHACHKIN: Well, obviously you have to assume
6 he was aware of it, I mean -- But I will receive 257, I will
7 take official notice of the -- what decision for the purposes
8 of --

9 (Whereupon, the document referred to
10 as TBF Exhibit No. 257 was received
11 into evidence.)

12 JUDGE CHACHKIN: Any objection to 258?

13 MR. SCHAUBLE: Yes, Your Honor, I have an objection
14 on the basis of relevance. And I understand Your Honor's
15 previous ruling, and I'm not seeking reconsideration of this,
16 but another issue that TBF sought was to determine whether
17 misrepresentations were made in this declaration here. And
18 you know, assuming arguendo to that, you would take official
19 notice of 257 which puts him on notice with heightened
20 scrutiny, I don't think that makes 258 the -- which was part
21 of -- part of the showing made to the Commission, I don't
22 think that makes this document independently relevant. Would
23 it be relevant taken in connection with 257.

24 MR. EMMONS: Well, Your Honor, on page 3 of the
25 Exhibit, and the reason this is offered, just to put this in

1 context, this was a statement submitted to the Commission by
2 George Gardner, while the original applications for these five
3 construction permits were pending. Because while those
4 applications were pending, the Commission's decision came out
5 in the RKO matter, that we've just discussed.

6 And here Mr. Gardner reporting that decision under
7 which he's been placed under heightened scrutiny. And in
8 particular on page 3 of the Exhibit, which is page 2 of his
9 declaration, he says toward the bottom of the page in the last
10 paragraph, "I now realize the importance of being absolutely
11 candid in applications and statements made by me to the
12 Commission, and have resolved to carefully review any such
13 applications and statements to insure that they fully and
14 accurately disclose any pertinent facts."

15 The issue in this proceeding involves applications
16 filed by George Gardner, very shortly -- or relatively soon
17 after -- after his statement was made. And the issue in the
18 proceeding is whether the -- whether those applications did
19 accurately and fully disclose all relevant and pertinent
20 facts.

21 And in making the judgment on that, Your Honor, it
22 is relevant to determine what procedures George Gardner did or
23 did not follow in reviewing and signing those LPTV extension
24 applications, in light of his representations to the
25 Commission of what he was going to do when reviewed and signed

1 applications.

2 There is ample law that a licensee has an
3 affirmative obligation to ascertain the truth of facts that
4 are being submitted to the Commission and that even gross
5 carelessness in submitting inaccurate statements, may be
6 tantamount to deceitful intent.

7 This Exhibit will show that George Gardner's
8 awareness of that he had a special obligation to be truthful,
9 and that it will show his knowledge that the FCC was relying
10 on, presumably on the pledge he made in this declaration, when
11 it reviewed his later filed extension applications.

12 So that's relevant to, again the second prong of the
13 issue which is what would be the effect of any finding of
14 misconduct in this connection.

15 The last point I want to make, maybe the most
16 important, which is that under the character policy statement,
17 the Commission has expressly said that an applicant's record
18 of compliance with rules and regulations of the Commission is
19 a relevant factor in determining what consequence should flow
20 from a finding of misconduct in this case. In other words,
21 did he have any prior violations.

22 I think that by direct analogy, it's relevant to
23 know here, whether the applicant violated representations that
24 he had made to the Commission in this declaration, which he
25 made for the purpose of securing the original grant of these

1 construction permits, did he then honor those representations
2 in reviewing and signing the applications that were made for
3 extension of those applications. In other words, did he
4 comply and do the things he said he was going to do, that
5 would be relevant to determining whether this was a
6 trustworthy applicant or licensee.

7 MR. SCHAUBLE: Your Honor, that was the exact sort
8 of issue Mr. Emmons sought, in which Your Honor previously
9 rejected in the petition --

10 JUDGE CHACHKIN: What issue did he seek?

11 MR. SCHAUBLE: He sought an issue -- he sought an
12 issue to determine whether Raystay -- whether George Gardner
13 made misrepresentations or lacked candor in rehabilitation
14 showings --

15 MR. EMMONS: No.

16 MR. SCHAUBLE: -- made to the Commission, that --

17 MR. EMMONS: That's a different issue, Your Honor,
18 that was the question of whether at the time Mr. Gardner made
19 these statements in his declaration. He intended to deceive
20 the Commission.

21 That's not what I'm talking about now, what I'm now
22 talking about is having made those statements, and assume
23 those statements were in good faith when made, the question
24 then becomes did he follow through to do the things that he
25 said he was going to do when he would submit applications and

1 | statements to the Commission in the future.

2 | Because if he did not follow through and do the
3 | things he said he was going to do, then that would be evidence
4 | that he failed to comply with his own representations to the
5 | Commission, which representations were clearly relied upon by
6 | the Commission when they agreed to rent these construction
7 | permits in the first place.

8 | MR. SCHAUBLE: Your Honor, I think we have -- I
9 | think we need to take into account what the elements of what
10 | type of issue we have here. We have a misrepresentation lack
11 | of candor issue. It deals with the intent of a George
12 | Gardner, which I believe -- which I believe Mr. Emmons is not
13 | fully taking into account here.

14 | I have no disagreement with the general proposition
15 | that licensees and applicants have certain obligations with
16 | respect to the truth of statements that are made in
17 | applications. And I think Your Honor doesn't need that
18 | particular statement to find, you know, there is more than
19 | ample case law on a licensee and applicants responsibility in
20 | that regard.

21 | And I'm not going to argue that George Gardner was
22 | unaware of need of the fact that statements in FCC
23 | applications were supposed to be true. And the fact that this
24 | representation was being made here, does not address the
25 | question of whether statements made in the extension